

REMARKS

Claims 6-11, 15-17, 19-21 and 23 are pending in the application. Examination and consideration are respectfully requested.

Claim Rejections – 35 U.S.C. § 103

Claims 16-17, 19-21, and 23 are rejected under 35 U.S.C. § 103 as being unpatentable over Uzan in view of Berthold, Smethers, Honzawa and Zavislan. Applicants disagree.

As set forth in paragraph 7 of the April 20, 2004 Office Action, the Examiner acquiesces that the combination of Uzan, Berthold, Smethers and Honzawa does not teach all of the elements of the pending claims. The Examiner then cites Zavislan to cure this deficiency. Applicants contend that Zavislan does not cure the deficiency.

On page 4 of the Office Action, the Examiner describes Zavislan as teaching “a module comprising a cuvette which holds a liquid sample, which cuvette has an opaque cover pressed against it.” Zavislan describes a spectrophotometer. Such a device performs measurement of optical density or spectral absorption for a liquid sample. To this end, an analysis light beam is projected by a lamp on a sample to be analyzed. A photodetector, that is disposed on the opposite side of the cuvette relative to the lamp, receives a light beam that has traveled through the liquid sample and measures the absorption. An analysis is then performed.

Conversely, Applicants’ claimed apparatus is for measuring chemiluminescence. In such a device, what is detected are the photons that are emitted by the sample further to a reaction between an enzyme and a substrate. No light is sent into the sample. In a chemiluminescence measuring apparatus, it is essential that the samples should be in complete obscurity so that each photon emitted as a consequence of the reaction is captured by the photodetector without any parasitic light produced by another light source.

In Zavislan, and in particular the embodiment shown in Figures 22 and 23, the spectrophotometer comprises a module having an excitation lamp 268 for measuring the special absorption of the sample in a transparent cuvette 271 which has an opaque cover 274 which pivots downwardly on a horizontal axis to close the cuvette 271. The function of the cover 274 is to close the top of the cuvette 271 as well as to close switch 276. Upon closing of switch 276, the lamp, or light source, is illuminated with light then projecting through the transparent cuvette 272. Another function of the cover is to guide the light that is being beamed through the tube in order to avoid the light emitted by the lamp to be dispersed in other directions other than through the tube.

In Applicants' claims, a light-proof shoe that is proof against external light is directly pressed against the planar rim of a vessel to form a temporary dark chamber. Applicants' opaque shoe as described in the specification on page 7, lines 20-22, prevents external light from getting into the vessel. In contrast, the pivoting cover of Zavislan does not form a temporary dark chamber in that it is the whole point of the Zavislan spectrophotometer to allow light to pass through the cuvette.

Accordingly, Applicants disagree with the Examiner's position that "it would have been obvious to one of ordinary skill in the art at the time of the invention to press the opaque shoe directly against the vessel as in Zavislan et al. because direct, as opposed to indirect, contact insures a tighter seal, which would keep light out in a more effective and efficient manner." Applicants' find no motivation to combine the references in that is the goal of Zavislan to allow light to pass through the cuvette even after the cover has been pivoted onto the cuvette. Light-tightness is defeated in Zavislan by the mere fact that the cuvette 271 is transparent. Accordingly, there is no motivation to combine the Zavislan with the other cited references.

Accordingly, without any motivation to combine Zavislan with the other cited references, Claims 16-17, 19-21 and 23 are allowable over the cited art.

Allowable Subject Matter

Applicants gratefully acknowledge the Examiner's indication that Claims 6-11 and 15 are allowed.

Applicants will comment on the Examiner's statement of reasons for allowance upon receiving a Notice of Allowability.

CONCLUSION

In view of the above remarks, it is submitted that the application is in condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Smith', written in a cursive style.

Billie Jean Smith
Reg. No. 36,940

Docket No. 072211-9011-00
Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108
(414) 271-6560

X:\clientb\072211\9011\A0875568.1